

NOT FOR PUBLICATION

[Docket No. 14]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

ABBE PERRY,

Plaintiff,

v.

FREEDOM MORTGAGE CORPORATION,

Defendant.

Civil No. 09-856 (RMB)

MEMORANDUM AND ORDER

THIS MATTER comes before the Court on Defendant Freedom Mortgage Corporation's ("Freedom") motion to dismiss or strike count II of Plaintiffs Abbe Perry's ("Plaintiff") Complaint. The Court has considered the papers filed by the parties in support of and in opposition to the motion, and for the reasons set forth herein denies Freedom's motion.

The underlying Complaint in this case is a putative class claim, filed by Plaintiff, contending that Freedom violated the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq. and the New Jersey's Wage Law ("NJWL"), N.J.S.A. 34:11-56a et seq. by improperly classifying mortgage loan officers to prevent them from receiving overtime pay for work in excess of 40 hours a week. In its motion to dismiss Plaintiff's NJWL claim, Freedom

argues that Plaintiff's FLSA and NJWL claims are legally incompatible. This Court concurs with and adopts Judge Linares' reasoning in Freeman v. Hoffman-Laroche, Inc. No. 07-1503, 2007 U.S. Dist. LEXIS 92589, at * 70*10 (N.J.D. Dec. 18, 2007), determining that dismissal of a cause of action under NJWL solely for "inherent incompatibility" with FLSA is not appropriate.

Freedom's additional argument is that the Court should dismiss Count II because Plaintiff cannot establish the "superiority" test required for class certification under Federal Rule of Civil Procedure 23(b)(3). The Court holds that this argument is premature. The parties have conducted no discovery. No motions for class certification have been filed. The Court will be in a much better position to address this issue at the class certification stage.

Accordingly, for the above reasons

IT IS ON THIS 1st day of June 2009, **ORDERED** that Defendant's motion to dismiss [Docket No. 14] be and hereby is **DENIED**.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge